Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

In the

Supreme Court of the United States

PAUL O. ROHART, M.D.,
Petitioner,

v.

NORTH BROWARD HOSPITAL DISTRICT,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE FOURTH DISTRICT COURT OF APPEAL, FLORIDA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Question 1:

Most hospitals, in the U.S., contract out their need for emergency medicine services to companies that supply these services. These services companies then employ emergency medicine physicians to work in hospital emergency departments. The Petitioner worked as an emergency medicine physician for a services company.

The Circuit Court's order stated: "The tort of willful interference with a business relationship does not exist where the defendant [Respondent] was the source of the business relationship interfered with."

When an emergency medicine services company contracts with a hospital to supply emergency department medical services and then hires physicians to deliver these services, who is the source of the employment relationship between the physician and services company – the hospital or the services company?

Question 2:

Florida is one of the few states that explicitly mandate the participation of physicians in investigating and reporting adverse patient medical incidents and medical errors.

Should a governmental agency be granted the protection of sovereign immunity when the agency's actions caused the termination of a physician because he investigated the unexplained death of his patient?

Question 3:

The Supreme Court of the State of Florida lacks jurisdiction to review a per curiam affirmance that contains no opinion and merely cites a case [a citation PCA], even if the decision is in conflict with a decision of another District Court of Appeal or of the Supreme Court. *See Dodi Pub. Co. v. Editorial America*, 385 So.2d 1369 (Fla. 1980). Likewise, a party may not use the court's extraordinary writ jurisdiction to obtain review of a citation PCA. See *Persaud v. State*, 838 So.2d 529 (Fla. 2003).

When a decision without an opinion is made, Florida's Rules of Appellate Procedure, at Rule 9.330(a), allow a party, in a motion for rehearing, to request a written opinion when the party believes it would provide a legitimate basis for Supreme Court review.

Can a District Court of Appeal ignore State Statute and State Supreme Court precedent, issue a decision without an opinion, and then refuse to issue an opinion when requested to do so without denying the Petitioner due process and equal protection under the Law?

PARTIES TO THE PROCEEDINGS

Petitioner

Paul O. Rohart, M.D is an emergency medicine physician.

Respondent

North Broward Hospital District [NBHD] is a governmental hospital district, supported by tax revenue, in Broward County, Florida. Its current name is Broward Health.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the decision of the Fourth District Court of Appeal, West Palm Beach, Florida. With government becoming more involved in healthcare, the issues presented in this Petition will be recurring.

OPINIONS BELOW

Fourth District Court of Appeal affirmance: App A. Circuit Court decision granting summary judgment: App B. Fourth District Court of Appeal denial of rehearing: App C. Florida Supreme Court dismissal: App D.

JURISDICTION

Florida's Fourth District Court of Appeal denied Petitioner's motion for rehearing on September 3, 2010. Florida's Supreme Court dismissed Petitioner's request for review on September 16, 2010. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause of the U.S. Constitution reads: "nor shall any State deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

Equal Protection Clause of the U.S. Constitution reads: "... or deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV, § 1.

Article V, § 3(b)(3) of the Florida Constitution: The Supreme Court "[m]ay review any decision of a district court of appeal ... that expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." A per curiam affirmance without an opinion is unreviewable because it does not expressly conflict with another appellate decision.

Article X, § 13 of the Florida Constitution: "Provisions may be made by general law for bringing suit against the state as to all liabilities now existing or hereafter originating."

STATUTE INVOLVED

§ 768.28(1), Fla. Stat., waiver of sovereign immunity in tort actions: "In accordance with s. 13, Art. X of the State Constitution, the state, for itself and for its agencies or subdivisions, hereby waives sovereign immunity for liability for torts ...."

STATEMENT OF THE CASE

The case addresses the wrongful termination of the Petitioner, Dr. Rohart, from his position as an emergency medicine physician for investigating the unexplained death of his patient in the emergency department of Broward General Medical Center (a part of North Broward Hospital District, Fort Lauderdale, Florida). Dr. Rohart had worked as an emergency medicine physician at North Broward Hospital District for over seven (7) years.

While investigating the unexplained death of one of his patients, Dr. Rohart was told to cease his investigation or the Respondent would demand his termination. After Dr. Rohart reported the circumstances of the patient's death to the District Attorney's Office, an active homicide investigation was begun, and continues. Dr. Rohart had no responsibility for the patient's death. A nurse intentionally gave the patient a massive lethal dose of medication.

Dr. Rohart was terminated.

The case has two Defendants, North Broward Hospital District (NBHD) and Phoenix Emergency Medicine of Broward, LLC (PEMB), the Petitioner's former employer and a supplier of emergency medicine physicians and emergency medicine management services to NBHD. The case has three counts: 1) Wrongful termination in violation of public policy against PEMB, 2) Wrongful termination in violation of Fla. Stat. § 448.101 *et seq.* against PEMB and 3) Tortious interference with a business relationship against NBHD.

NBHD's motion for summary judgment was heard on April 24, 2009.

On June 17, 2009, the Circuit Court ordered that NBHD's motion be granted for the following reasons: 1) "The tort of willful interference with a business relationship does not exist where the defendant was the source of the business relationship interfered with," 2) "the Plaintiff has failed to come forth with any evidence, in opposition to the motion for summary judgment, that the Defendant's actions exceeded the scope of its privilege to protect its own business interests," and 3) "the claim would be barred by § 768.28(9)," the exception to the waiver of sovereign immunity.

The Petitioner did present evidence to the Circuit Court that showed that the Defendant's actions exceeded the scope of any privilege to protect its own business interests. The Petitioner contends that his employer was the source of his employment and any business (employment) relationship interfered with, not NBHD.

On August 4, 2010, the District Court affirmed the Circuit Court's decision without an opinion. The District Court's decision had two citations: 1) *Palm Beach Cnty. Healthcare Dist. v. Prof'l Med. Educ., Inc.*, 13 So. 3d 1090 (Fla. 4th DCA 2009) and 2) *Fla. Tel. Corp. v. Essig*, 468 So. 2d 543 (Fla. 5th DCA 1985).

On August 10, 2010, Petitioner filed a motion for rehearing, and requested a written opinion, but the motion was denied on September 3, 2010. A notice to invoke discretionary review was filed on September 10, 2010. The Florida Supreme Court

dismissed Petitioner's request on September 16, 2010.

REASONS FOR GRANTING PETITION

Litigants should have the right to seek a review, by the Florida Supreme Court, of any decision rendered by a District Court of Appeal. The decision to grant a review should be left to the judgment of the Justices of the Florida Supreme Court and not put beyond their reach because the District Court of Appeal rendered a decision without an opinion. The U.S. Supreme Court is not constrained with respect to its certiorari jurisdiction. Nor should the Florida Supreme Court be constrained.

In 1980, the Florida Constitution was amended to prevent the Florida Supreme Court from reviewing District Court of Appeal decisions made without an opinion. These decisions are referred to as per curiam affirmances [PCA's].

"Between July 1998 and July 1999, PCA's were issued in more than 69 percent of all criminal cases, in more than 65 percent of all administrative appeals, and in more than 45 percent of all civil appeals." Florida Bar Journal, *PCAs in the DCAs*, March 2004, p. 10. Between then and now, the percentages have certainly increased. The significant use of PCA's, in the State of Florida, clearly limits access of its citizens to the justice of the Florida Supreme Court.

Without an opinion, how can an individual know how the law was applied to his or her case?

Without an opinion, the public cannot know what legal precedent was applied. This offends the principle that justice must be rendered in public and subjects the litigants to secret justice. *Ex parte McCarthy*, [1924] 1 K.B. 256, 259 (1923) ("Justice should not only be done, but should be manifestly and undoubtedly be seen to be done."). *Offutt v. United States*, 348 U.S. 11, 14, 99 L. Ed 11, 75 S. Ct. 11 (1954) ("Justice must satisfy the appearance of justice."). The appearance of justice is undermined when an opinion is not given. The use of a PCA denies due process. It also follows that appellate decisions without an opinion create unequal access to the courts. It deprives litigants of effective appellate review. After reviewing a fully briefed appeal, it should not be overly demanding to write a few paragraphs to explain a decision. Not doing this indicates that the court's intent is to insure that further review, within the State, is unavailable for the litigant.

Due to the controversy surrounding the use of PCA's, Florida's appellate rule 9.330(a), governing motions for rehearing, was amended to allow a litigant to request the court issue a written opinion when a decision was entered without an opinion. *Amendments to Florida Rules of Appellate Procedure*, 827 So.2d 888 (Fla. 2002). But, a rule change means nothing when a request for an opinion is ignored.

The use of a PCA should not be used to deprive a citizen of a constitutional and statutory right. The citizens of Florida gave the Legislature the authority to waive sovereign immunity in Article IV, section 19 of the Florida Constitution, which was adopted in

1868. See *Cauley v. City of Jacksonville*, 403 So.2d 379, 381 (Fla. 1981). This constitutional provision is now found in Article X, section 13 of the Florida Constitution. The Legislature exercised this authority in 1973, when it first enacted § 768.28, Fla. Stat. The Supreme Court of the State of Florida has made it clear that the waiver provision of the statute applies to municipalities as well as to state and county governmental entities. *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010, 1016 (Fla. 1979). By enacting the waiver statute, the Legislature declared that the policy considerations for the common law rule of immunity were outweighed by the countervailing public policy of allowing citizens, injured by the tortious acts of government, to sue for recovery of their damages. *Berek v. Metropolitan Dade County*, 396 So.2d 756, 758 (Fla. 3rd DCA 1981).

The use of a PCA should not be used to support the District Court of Appeal's act of ignoring statute and public policy. Florida is one of the few states that explicitly mandate the participation of physicians in adverse medical incident reporting programs. According to §395.0197(1)(e), Fla. Stat., it is␣" . . . *the affirmative duty of all health care providers and all agents and employees of the licensed health care facility to report adverse incidents* . . ." An unexplained death of a patient, in the Respondent's emergency department, would require that the patient's physician investigate to determine the cause of death, and to determine if the death was an adverse incident. Not only must physicians investigate, report and participate within

licensed facilities, but Florida Law mandates reports of adverse incidents in office practice settings for both physicians [§458.351(4), Fla. Stat.] and osteopaths [§459.026, Fla. Stat.]. A physician should not be terminated for doing his duty as a citizen and physician.

POINT ONE: WAIVER OF SOVEREIGN IMMUNITY AND PRECEDENT IGNORED

As there was no opinion, the Petitioner must rely upon the cited cases to divine the logic for the District Court of Appeal's decision.

One of the two cases cited in the District Court's PCA, *Palm Beach Cnty. Healthcare Dist. v. Prof'l Med. Educ., Inc.*, 13 So. 3d 1090, 1095 (Fla. 4th DCA 2009), grants absolute immunity to the Respondent for tortious interference in contradiction to Florida Supreme Court precedent in: *McGhee v. Volusia County*, 679 So.2d 729 (Fla. 1996); *Trianon Park Condominium Association, Inc. v. City of Hialeah*, 468 So.2d 912 (Fla. 1995); *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010 (Fla. 1979).

The Florida Supreme Court has found that the general waiver statute [§ 768.28, Fla. Stat.] "states that the governmental agency is liable for the negligent or wrongful act or omission of any employee of the agency under circumstances in which the state or agency or subdivision, if a private person, would be liable." *McGhee v. Volusia County*, 679 So.2d 729, 730 (Fla. 1996); § 768.28, Fla. Stat., Waiver of Sovereign Immunity.

The Florida Supreme Court has formulated two tests to distinguish between those discretionary functions of government that are immune from liability and the operating functions which are not immune from liability.

The *Trianon* Test attempts to categorize those government functions for which there is or is not a duty of care under § 768.28, Fla. Stat. *Trianon* Category #4, Providing Professional, Educational, and General Services, is the one that would apply to the instant case. With respect to governmental functions that fall in category #4, tort liability is established because there is a common law duty of care regarding how property is operated and maintained and how professional and general services are performed. *Trianon Park Condominium Association, Inc. v. City of Hialeah*, 468 So.2d 912, 921 (Fla. 1995). Under the *Trianon* Test there is a duty of care that applies to the Respondent under § 768.28, Fla. Stat.

The Florida Supreme Court in the *Commercial Carrier v. Indian River County* case adopted a test consisting of four questions that must be answered on a case-by-case basis. The questions are the following: 1) Does the challenged act, omission, or decision necessarily involve a basic government policy, program or objective? 2) Is the questioned act, omission, or decision essential to the realization or accomplishment of that policy, program, or objective as opposed to one that would not change the course or direction of the policy, program, or objective? 3) Does the act, omission, or decision require the exercise of basic policy evaluation, judgment, and

expertise on the part of the governmental agency involved? 4) Does the governmental agency involved possess the requisite constitutional, statutory, or lawful authority and duty to do or make the challenged act, omission, or decision?

If these preliminary questions can be clearly and unequivocally answered in the affirmative, then the act, omission, or decision in question can, with reasonable certainty, be classified as a discretionary governmental function, which is immune from tort liability. If the answer to any of these questions calls for or suggests a negative answer, then the activity is an operational function that is not immune from liability. *Commercial Carrier Corp. v. Indian River County*, 371 So.2d 1010, 1019 (Fla. 1979). In the instant case, the answers to questions 1 thru 3 are negative and, under the *Commercial Carrier* Test, the Respondent's tortious interference is not immune from liability under § 768.28, Fla. Stat.

The District Court of Appeal completely ignored the application of the tests in *Trianon Park Condominium Association, Inc. v. City of Hialeah* and *Commercial Carrier Corp. v. Indian River County* in its analysis in *Palm Beach Cnty. Healthcare Dist. v. Prof'l Med. Educ., Inc.* The District Court did not misapply them, it simply ignored them. The District Court arbitrarily and capriciously decided that *Palm Beach County Healthcare District* should be granted "absolute immunity" because its actions where those "involving a governmental agency's expenditure of funds." *Palm Beach Cnty. Healthcare Dist. v. Prof'l Med. Educ., Inc.* at 1095. All operational activities of

governmental agencies involve the "expenditure of funds." Operational activities are not immune from the waiver of sovereign immunity. The District Court of Appeal, based on Florida Supreme Court precedent, could not grant immunity to the Respondent. District Courts of Appeal must follow Florida Supreme Court precedent. *Hoffman v. Jones*, 280 So.2d 431 (Fla. 1973); *State v. Lott*, 286 So.2d 565 (Fla. 1973).

Absolute Immunity is a privilege that may be applied to certain government officials, not a government agency, from claims for damages. "The burden of establishing a claim of absolute immunity is on the public official claiming the immunity. *Butz v. Economou*, 438 U.S. 47, 98 S.CT. 2894, 57 L.Ed.2d 895 (1978); *Nixon v. Fitzgerald*, 457 U.S. 731, 102 S.Ct. 2690, 73 L.Ed.2d 349 (1982)." *Junior v. Reed*, 693 So.2d 586, 589-90 (Fla 1st DCA 1997). Absolute immunity and/or qualified immunity are affirmative defenses that must be pled and the burden of asserting the defense rests on the governmental official. *Junior v. Reed* at 592. No official of NBHD made a claim for immunity. NBHD did not assert immunity, for an employee, as an affirmative defense. A defense not made, cannot be granted. A defense that case law states may apply only to some government officials cannot be applied to the agency.

"It seems to be settled law of this state that the duty of a court to apply to admitted facts a correct principle of law is such a fundamental and essential element of the judicial process that a litigant cannot be said to have a remedy by due course of law ... if the judge fails or refuses to

perform that duty." *State v. Smith*, 118 So.2d 792, 795 (Fla. 1st DCA 1960); *Mathews v. Metropolitan Life Insurance Co.*, 89 So.2d 641, 642 (Fla. 1956).

Ignoring the statute granting a waiver of sovereign immunity and ignoring Florida Supreme Court precedent concerning this right has deprived the Petitioner of due process and equal protection. Blocking the Respondent from seeking review, by issuing a PCA, compounds the deprivation.

Further supporting this is the fact that the District Court also ignored District Court of Appeal precedent:

By citing *Florida Tel. Corp. v. Essig*, 468 So.2d 543 (Fla. 5th DCA 1985), the District Court ignored Florida law that addresses the application of a limitation on a claimed privilege: the obligation of an interested party to act properly, justly and fairly. "In fact, Florida Courts have recognized that the privilege to interfere is a valid defense to a claim for tortious interference only where the interference was not done for some improper purpose. See *Morsani v. Major League Baseball*, 663 So.2d 653, 657 (Fla. 2d DCA 1995); *Nizzo v. Amococ Oil Co.*, 333 So.2d 491, 494 (Fla. 3d DCA 1976)." *Burger King Corp. v. Ashland Equities* 161 F.Supp.2d 1331, 1336 (S.D. Fla. 2001); See also *Salit v. Ruden, McClosky, Smith, Schuster*, 742 So.2d 381, 386 (Fla. 4th DCA 1999).

"As stated by Florida's First District Court of Appeal, 'the privilege does not encompass the purposeful causing of a breach of contract.' *Making Ends Meet, Inc. v. Cusick*, 719 So.2d 926, 928 (Fla. 3d DCA 1998) (quoting *McCurdy v. Collis*, 508 So.2d 380, 384 (Fla. 1st DCA 1987)." *Burger King Corp. v.*

Ashland Equities at 1336. The Respondent purposely caused Dr. Rohart's employment contract to be breached.

POINT TWO: PUBLIC POLICY REQUIRED THE PETITIONER TO INVESTIGATE

In retaliation for Dr. Rohart's investigation into the suspicious death of his patient, Respondent demanded that Dr. Rohart be terminated. He was given a letter of termination with 90 days notice on August 15, 2006.

Dr. Rohart continued his investigation into the death of his patient and called the deceased patient's spouse on September 15, 2006. Florida law is specific that "[e]very licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.401(1), in person about adverse incidents that result in serious harm to the patient." § 456.0575, Fla. Stat. Also, § 765.401(1)(b), Fla. Stat., designates the patient's spouse as the appropriate proxy for Dr. Rohart's deceased patient.

For talking to the spouse of his patient, the Respondent demanded that Dr. Rohart be given a letter of immediate termination, on September 15, 2006.

" ... physicians owe a duty of care to patients. Restatement (Third) of Torts Liab. For Physical Harm Tort Liab. For Physical Harm § 41 cmt. H (Proposed Final Draft No. 1 2005)." *Torres v. Sarasota County Public Hospital*, 961 So.2d 340, 344 (Fla. 2nd DCA 2007). This duty of care would include

investigating the unexplained death of a patient. A telephone call to the deceased patient's spouse would be part of exercising this duty.

Florida has also extended a physician's duty to third parties in some circumstances. *Pate v. Threlkel, M.D.*, 661 So.2d 278, 282 Fla. 1985) ("when the prevailing standard of care creates a duty that is obviously for the benefit of certain identified third parties and the physician knows of the existence of those third parties, then the physician's duty runs to those third parties."); *Gill v. Hartford Accident & Indem. Co.*, 337 So.2d 420 (Fla. 2nd DCA 1976) (physician had a duty to warn of patient's contagious disease); *Hoffman v. Blackmon, 241 So.2d 752* (Fla. 4th DCA 1970) (physician had a duty to warn family members of patient's disease). It would follow that an investigation to determine the cause of an unexplained death of a patient would also be a duty that a physician would have. Particularly, if the cause of the unexplained death was something that could possibly impact others, such as future emergency medicine patients at the Respondent's emergency department, as in the instant case.

Dr. Rohart had a right and duty to investigate the unexplained death of his patient and to talk to the spouse of his deceased patient. Public policy supports this. The District Court of Appeal should not have denied the Petitioner the right to the waiver of sovereign immunity and grant the Respondent absolute immunity for its actions when the Respondent's actions clearly violated public policy.

The District Court's actions denied due process and equal protection. The Respondent unjustly and

intentionally interfered with a physician's duty to his patient and the physician's ability to honor his Hippocratic oath.

POINT THREE: RESPONDENT COULD NOT BE THE SOURCE OF THE BUSINESS RELATIONSHIP INTERFERED WITH

Most hospitals, in the U.S., contract out their need for emergency medicine services to companies that supply these services. These services companies then employ emergency medicine physicians to work in hospital emergency departments. The Petitioner was an employee of one of these services companies. This employment scenario affects most emergency medicine physicians working in the U.S. today.

The Circuit Court's decision stated: "The tort of willful interference with a business relationship does not exist where the defendant [Respondent] was the source of the business relationship interfered with." The question is simply - who is the source of the business relationship with which the Respondent interfered? The Respondent forced the Petitioner's employer, Phoenix Emergency Medicine of Broward, LLC [PEMB], to fire Dr. Rohart. The business relationship interfered with was the employment relationship between Dr. Rohart and his employer, PEMB. The Respondent was not the source of this employment relationship. PEMB hired and fired Dr. Rohart.

The Respondent entered into an agreement with the Petitioner's employer. The Petitioner's employer, PEMB, was to supply emergency medicine services for the Respondent. The Respondent paid PEMB for these services. The Respondent did not pay the Petitioner for his work. PEMB scheduled the Petitioner's work, supervised him, and paid the Petitioner for his work. PEMB billed the petitioner for his medical malpractice insurance and PEMB deducted the amount from his paycheck. There was no economic relationship between the Respondent and the Petitioner.

The only opportunity and business relationship afforded the Petitioner was that of employment by PEMB. The Petitioner was not a shareholder in PEMB, and could not be a partner to the business relationship between the Respondent and PEMB.

The Respondent did not have the power to hire or fire the Petitioner. The Respondent had to demand Dr. Rohart's employer fire Dr. Rohart. Florida case law, in *Albritton v. Gandy* , addressed this issue. Mr. Albtritton, a county commissioner, did not have the authority to hire or fire Mr. Gandy and, therefore, the Court held that an action for tortious interference could continue. *Albritton v. Gandy*, 531 So.2d 381, 388-89 (Fla. 1st DCA 1988).

The determination of who is the source of a business relationship is critical to determining whether or not the Petitioner, and others in similar situations, will have access to the tort of intentional interference with a business relationship. By incorrectly, arbitrarily and capriciously attributing

the Respondent to be the source of the employment relationship between the Petitioner and his employer, the lower courts denied the Petitioner due process and equal protection.

POINT FOUR: IF THE COURT DOES NOT GRANT PLENARY REVIEW, IT SHOULD REVERSE THE FOURTH DISTRICT COURT OF APPEAL DECISION AND REMAND THE CASE TO THE CIRCUIT COURT

The issues at stake are important and recurring. They affect the freedom of a physician to exercise his or her duty to a patient. A physician should not be punished, by the State, for exercising the physician's duty to a patient, particularly when statute requires that a physician do so. The issues affect the right of a citizen to obtain access to a State Supreme Court, and the right of a citizen to seek redress for tortious injury by the State.

If the Court does not grant plenary review, it should summarily reverse the Fourth District Court of Appeal decision and remand the case to the Circuit Court for further proceedings. As outlined above, The Fourth District Court of Appeal ignored Florida Supreme Court precedent and statute in its decision. It blocked further review of its decision by issuing a decision without an opinion. The District Court of Appeal then refused to issue an opinion when requested, as allowed by the Rules of Appellate Procedure. The issues in this case should not be decided in secret.

The cases cited by the Fourth District Court of Appeal in its PCA "expressly and directly conflicts with a decision of another district court of appeal or of the supreme court on the same question of law." Article V, § 3(b)(3) of the Florida Constitution. Supreme Court review should not have been denied.

The Petitioner has been deprived of due process and equal protection.

The Court has held that "virtually all" of the individual rights found in the Bill of Rights apply to the States through the Due Process Clause of the Fourteenth Amendment. *Pac. Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 34 (1991). Under the doctrine of selective incorporation, these rights have been applied to the States because they are considered "fundamental"—that is, "necessary to an Anglo-American regime of ordered liberty." *Duncan v. Louisiana*, 391 U.S. 145, 149 n.14 (1968).

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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APPENDIX

APPENDIX A — PER CURIAM DECISION OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT DATED AUGUST 4, 2010

DISTRICT COURT OF APPEAL OF THE
STATE OF FLORIDA
FOURTH DISTRICT
July Term 2010

No. 4D09-2663

[August 4, 2010]

PAUL O. ROHART, M.D.,

Appellant,

v.

PHOENIX EMERGENCY MEDICINE OF BROWARD, LLC, a Florida corporation, and NORTH BROWARD HOSPITAL DISTRICT, d/b/a BROWARD GENERAL MEDICAL CENTER,

Appellees.

PER CURIAM.

Affirmed. See Palm Beach Cnty. Healthcare Dist. v. Prof'l Med. Educ., Inc., 13 So. 3d 1090 (Fla. 4th DCA 2009), *rev. denied*, 34 So. 3d 2 (Fla. 2010); *Fla. Tel. Corp. v. Essig*, 468 So. 2d 543 (Fla. 5th DCA 1985).

Appendix A

GROSS, C.J., WARNER and CIKLIN, JJ., concur.

* * *

Appeal from the Circuit Court for the Seventeenth Judicial Circuit, Broward County; Thomas M. Lynch, IV, Judge; L.T. Case No. CACE 06-19273(14).

William T. Cushing, M.D., Cary, North Carolina, for appellant.

Janine Kalagher McGuire of Conrad & Scherer, LLP, Fort Lauderdale, for appellee, North Broward Hospital District, d/b/a Broward General Medical Center.

APPENDIX B — ORDER OF THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA DATED JUNE 17, 2009

IN THE CIRCUIT COURT OF THE
17th JUDICIAL CIRCUIT IN AND
FOR BROWARD COUNTY, FLORIDA

JUDGE: THOMAS M. LYNCH IV

Case No. CACE 06 - 19273 (14)

PAUL O. ROHART, M.D.,

Plaintiff,

vs.

PHOENIX EMERGENCY MEDICINE
OF BROWARD, LLC,
a Florida corporation, *et. al.*,

Defendants.

ORDER GRANTING MOTION FOR FINAL SUMMARY JUDGMENT

THIS CAUSE having come before the Court upon the Defendant, North Broward Hospital District's ("the District") Motion for Final Summary Judgment, and the Court having considered said motion and Plaintiff's response thereto, heard arguments of counsel, reviewed the applicable case law and rules of procedure, and being

otherwise fully advised in the premises, hereby finds and decides as follows:

The Plaintiff is suing the District for tortuous interference with a business relationship. "The tort of willful interference with a business relationship does not exist where the defendant was the source of the business opportunity allegedly interfered with." *The Genet Company v. Annheuser-Busch. Inc.*, 498 So.2d 683, 684 (Fla. 3d DCA 1986). Further, the Plaintiff has failed to come forth with any evidence, in opposition to this motion for summary judgment, that Defendant's actions exceeded the scope of its privilege to protect its own business interests and, if it did, the claim would be barred by § 768.28(9). Accordingly, it is

ORDERED AND ADJUDGED that the motion is GRANTED.

DONE AND ORDERED in Chambers, Broward County Courthouse, 201 S.E. 6th Street, Fort Lauderdale, Broward County, Florida 33301, this 17 day of June, 2009.

_____

THOMAS M. LYNCH IV.
CIRCUIT COURT JUDGE

APPENDIX C — ORDER OF THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA, FOURTH DISTRICT DATED SEPTEMBER 3, 2010

IN THE DISTRICT COURT OF APPEAL OF
THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES
BLVD., WEST PALM BEACH, FL 33401

CASE NO.: 4D09-2663
L.T. No. : CACE 06-19273 14

September 3, 2010

PAUL O. ROHART, M.D.

Appellant / Petitioner(s),

v.

PHOENIX EMERGENCY
MEDICINE, ETC., ET AL.

Appellee / Respondent(s).

BY ORDER OF THE COURT:

ORDERED that appellant's motion filed August 10, 2010, for rehearing is hereby denied.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

/s/_____
MARILYN BEUTTENMULLER, Clerk
Fourth District Court of Appeal

APPENDIX D — ORDER OF THE SUPREME COURT OF FLORIDA DATED SEPTEMBER 16, 2010

Supreme Court of Florida

THURSDAY, SEPTEMBER 16, 2010

CASE NO.: SC10-1776
Lower Tribunal No(s).: 4D09-2663,
CACE06-19273(14)

PAUL O. ROHART

Petitioner(s),

vs.

NORTH BROWARD
HOSPITAL DISTRICT

Respondent(s)

It appearing to the Court that it is without jurisdiction, the Petition for Review is hereby dismissed. *See Dodi Publishing Co. v. Editorial America, S.A.*, 385 So. 2d 1369 (Fla. 1980).

No motion for rehearing will be entertained by the Court.

/s/_____
Thomas D. Hall
Clerk, Supreme Court